

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT CINCINNATI**

JOHN VAN TIELEN,

Petitioner,

: Case No. 1:13-cv-642

- vs -

Chief Judge Susan J. Dlott
Magistrate Judge Michael R. Merz

Warden, Chillicothe Correctional
Institution,

:

Respondent.

ORDER ADOPTING REPORT AND RECOMMENDATIONS

This habeas corpus case is before the Court on the Report and Recommendations Doc. No.17) and Supplemental Report and Recommendations (Doc. No. 23) of United States Magistrate Judge Michael R. Merz to whom this case was referred pursuant to the General Order of Reference for this District. Petitioner has filed Objections to both Reports (Doc. Nos. 20, 26).

The Court has reviewed the findings and conclusions of the Magistrate Judge and has considered de novo all of the filings in this case with particular attention to the issues as to which Petitioner has lodged objections. Having done so, the Court determines that the Magistrate Judge's recommendations should be adopted.

Van Tielen's objection that his trial attorney denied having seen the file archival history which would have shown when the pornographic images were received and when they were downloaded to the hard drive and copied to the thumb drive does not obviate the fact that the images were found in those two places. Petitioner's claim that the police statement that he had admitted the images would be found in those two places was not reduced to writing does not

falsify the police claim that the statement was made and, in any event, the images were ground in those two places. It is true that at trial the State would have had to prove the source of the images, but Petitioner suggests no way in which it would have been difficult for the State to do so, and he was permitted to plead to only four counts of a ten count indictment which would have been amenable to the same proof.

Accordingly, it is hereby ORDERED that the Magistrate Judge's Report and Recommendations be adopted, that the Petition herein be dismissed with prejudice, and that Petitioner be denied a certificate of appealability. The Court hereby certifies to the Sixth Circuit Court of Appeals that any appeal from this Order would be objectively frivolous. The Clerk shall enter judgment accordingly.

December 2, 2014..

____s/Susan J. Dlott_____
Susan J. Dlott
Chief United States District Judge